1949. (K) File No. B. Evacuees (Administration of Property) Legal Dept. 49

B BRANCH

Subject:— L. A. Bill No LXXVIII of 1948

A Bill to provide for the administration of Evacuees Property in the Province of Bombay.

Bom Act No. XXIV of 1949.

925

File No. B. Evacuees (Administration of Property) 49

Gen. 194 e.

706-B

I have gone through the draft Ordinance and made the necessary changes.

2. As regards the subject-matter of the Ordinance, It mainly falls within Entry 1 of List II. That entry relates inter-alia to 'Public Order' The main object of the Ordinance appears to be to take care of evacuees property and secure it from pillage and loot. This being the primary matter dealt with the Ordinance, it can be held to be falling within the Entry "Public Order" in List II. This view can be supported by the Privy Council ruling in Charles Russel Vs. the Queen, 7, Law Reports, p.829.

3. As desired, a draft Ordinance has been prepared on the lines of the East Punjab Evacuees (Administration Property) Act, 1947.

4. Sec. 3 of the East Punjab (Evacuees (Administration of Property) Act, 1947 makes provision for the appointment of one or more additional custodians of evacuee property. Since the propblems of evacuees in this province is not acute, it does not seem necessary to make provision for the appointment of additional custodian of the evacuees property.

5. Section 4 of the East Punjab Act makes proviaion for vesting in the custodian all evacuee property situated within the prov- This provision seems to follows clause (1 of Rule 114(1) of the Defence of

India Rules which in turn seems to be based on section 7 of of the English Trading with the Enemy Act, 1939. Neither the Defence of India Rules nor The English Act contain a provision as in clause 8 of the Ordinance for taking possession of property. Clause 8 specifically authorises the custodian to assume possession of or control over evacuee property and clause 9 thereof gives the person claiming right to or interest in such property to make an application to the Custodian within a prescribed period. There are no provisions in the Ordinance stating the consequences resultant on the vesting of the evacuees' property in the custodian. Clause 4 of the Ordinance does not appear to serve any purpose and may be omitted from the Ordinance. It may be pointed out in this connection that the West Punjab Ordinance does not contain any such provision.

5. Clause 7 of the Ordinance refers to appeal. A specifice provision is made in the clause for extending the period of limitation for appeal.

6. Clause 13: Section 7 of the English Trading with the Enemy Act, 1939 provides for payment of prescribed fees to the Custodian. Under that Act, however, fees received by the Custodian have to be paid to the Exchequer of the United Kingdom.
A similar provision is made in clause 13 directing that the fees payable to the Custodian shall be credicted to the Provincial Government.

8. Clause 14. This clause correspoponds to sec. 12 of the East Punjab Act. Under that section. on satisfied that evacuees have returned or are

returning to the Province, the Provincial Government may, by a notification in the Official Gazette, authorise the return of their immovable property to the owners. This section does not make provision for evacuees who have left their place of residence but have not left the province. Clause 14 of the Ordinance, however, covers all evacuees wh have left India or who have left their place of residence f for any other place in the province or outside the province but within India. This clause will meet the suggestion made by the Govt. of India in their letter of 14th May 1948 at p. 103 ante.

9. Clause 28:- this clause corresponds to section 22 of the East Punjab Act. Clause (a) of sub-section (2) of that section provides for making of rules for prescribing the terms and conditions of service of custodians and other officers appointed under the Act and for furnishing the security by them. Since the Custodians, Deputy Custodians ar Asstt. Custodians will be appointed by the Provincial Government and their salaries also paid by the Provincial Government, they will be Crown servants. Accordingly, their conditions of service will be governed by rules made under section 241(2) (b) of the Govt. of India Act, 1935. Clause 28 of the Ordinance does not therefore make any provision for prescribing the terms and conditions of service of custodians and for furnishing of security by them.

10. The subject matter of the Ordinance primarily falls under Entry 1 of List II in the Seventh Schedule to the Govt of India Act, 1935(Public Order). The main object of the Ordinance is to protect the property of the evacuees from

4-5.

pillage and loot. It can, therefore be said with reason that the subject-matter of the Ordinance relates to "Public Order" within the meaning of Entry 1 of List II. In the case of Charles Russel Vs. the Queen, 7 Law Reports, Appeal Cases, p. 829, the Privy Council considered the competence of the Dominion Parliament to pass the Canada Temperance Act, 1878 which in effect uniformly prohibited the sale of intoxicant liquors except in wholesale quantities or for certain specified pruposes, regulated the traffic in the excepted cases and made sales of liquors in violation of the prohibition regulations contained in the Act criminal offences punishable by fine. In that case the Privy Council held that what the Dominion Parliament was dealing with in legislation of that kind was not a matter in relation to property and its rights but one relating to public order and safety. That was the primary matter dealt with, and though incidentally the free use of things in which men might have property is interfered with, that incidental interference did not alter the character of the law. In view of the principle enunciated by the Privy Council case, namely Reil Vs. the Queen, 10 Appeal cases, 675, the Privy Council held that 34-35 Vict. Chap. 28 which authorised the Parliament of Canada to provide for the administration, peace, order and good government of any territory not for the time being included in the Province, vested in that Parliament the utmost discretion of enactment for the attainment of those objects. The various provisions of the Ordinance which are intended for securing the evacuees' property from destruction by pillage or loot or otherwise can, in view of the above Privy Council ruling, be related to public order.

11.) The subject-matter of the Ordinance can also be held as falling under Entries 2,21,37,38 and 54 in List II and Entries 1,2,4,5,9,15,35 and 36 in List III in the Seventh Schedule to the Government of India Act, 1935. The Provisions of clause 6 of the Ordinance are ~~ex~~ repugnat to the provisions of the Transfer of Property Act, 1882, which is an existing law relating to Entry 8 in the Concurrent Legislative List. It would, therefore be necessary to obtain the instructions from the Governor-General before promulgating the Ordinance.

12.) P & S. Deptt. should attach the requisite Statement to the Ordinance.

sd/-
29/5.

Addl. Secy.

Madhav Rackadam.
c/5 6/6/.

In Letter No. R & R 15 (31) dated 22nd January 1948, the Govt, of India has suggested legislation on the lines of East Punjab Evacuees (Administration of Property) Act, 1947. It appears that the West Punjab Government has passed a similar law in Pakistan, and it is stated that the Pakistan Government intends the extend it to the whole of Pakistan. The Government of India desires that there should be uniformity in law dealing with the property of evacuees throughout the Indian Union. It is suggested that the property of the evacuees should be available for use for the rehabilitation of the refugees. The East Punjab Act has been recently amended by another Act which is called the East Punjab Evacuees (Administration of Property (Amendment) Act, 1948. The salient features of the punjab Act are:-

(1) A custodian of the evacuees' property is to be appointed by Government.

(2) The evacuees' property vests in the custodian, and the custodian is empowered to take possession of and manage the property.

(3) "Evacuee" is defined as a person ordinarily residing in or owning property or carrying on business within the Province but who on account of civil disturbances, or the fear of such disturbances, or the partition of the Country

has left India. An addition has been made to this definition by the Amending Act of 1948 to that effect that the person who on account of civil disturbances, or the fear of such disturbances, or the fear of such disturbances or the partition of the country cannot transfer, occupy or supervise his property or carry on his business or watch his interest or enforce his rights is also included in the term "evacuee".

The Amending Act of 1948 also makes an important change in the East Punjab Act providing that no sale, mortgage or any other transfer of evacuees' property shall be valid until such transfer has been confirmed by the custodian. The Act contains various powers for the management of the property and provides that when th evacuees have returned, the Provincial Government may direct the return of the properties to the evacuees.

2. It is no doubt true that the East Punjab Legislature has passed an Act to the above effect. It is also true that similar Acts have been passed in Pakistan. The Govt. of India have directed all provinces to enanct laws on those lines. It is presumed that the validity of such a law must have been considered by the Governments which have passed the laws and also by the Govt. of India. In the papers forwarded to this Government, there is, however, no reference regarding any decision or consideration of this question.

As the question is not free from doubt, I would suggest that both the Govt. of India as well as Govt. of East Punjab should be asked whether

they have considered the question and what their views are. An arguable case in support of the proposed Ordinance can possibly be made out on the following grounds.

3. It would appear that the subject-matter of the Ordinance is the administration or management of evacuees' property by Government through a statutory officer who would act as a custodian or trustee until the return of the evacuee. Leaving aside the question of the extended meaning which the Amending Act of 1948 have given to the East Punjab Act, an evacuee is a person who on account of the Civil disturbances or fear of disturbances or on account of the partition of India has left the territores of the Indian Dominion.

It is no doubt true that there is not and could not be any specific entry in any of the three lists in the Seventh Schedule which would expressly and directly relate to the subject matter of poposed Ordinance. The conditions which have now come into existence could not have been anticipated by the framers of the Constituti n Act of 1935. In a constitution however where legislative powers are distributed among several units and where such powers are enumerated by Entries, it has been held that the enumeration can never be exhaustive.

In construing these Entries, too narrow or literal construction is not desirable, but construc-

must be large and liberal (Henrietta V. A.G. for canada 1930 A. C. 126).

At the same time it must be remembered that the framers of the construction could not have anticipated the changes which the political situation may bring in future. The difficultxy in interpreting a Constitution Act during a transitional period when political changes have already come into operation, but the old constitution is still continued in operation, is great. It is true that the Indian Constitution is still continued in operation, is great.

It is true that the Indian Constitution of 1935 does not contain Entries of such general nature as 'property and civil rights, or peace, order and good government' as occur in the Canadian and Australian Constitutions. Such Entries are useful and make the Constitution elastic. But in the absence of such entries, recourse will have to be taken to a large and liberal construction rule of interpretation recommended by the Privy Council. As observed in Herrietta's case referred to above, the constitution is a living tree which is capable of growth and expension within its natural limits.

4. So far as this case is concerned, there is no question of aconflict between the powers of the Centre and those of the Province. No question of aconflict between the powers of the Centre and those of the Province. No question will arise that the powers of the Centre indicated by any of the Entries in List I have been encroached upon. The only question is whether the subject-matter of the proposed Ordinance can be said to be covered by any one or more of the Entries in the Seventh Schedule.

It cannot be doubted that the protection or preservation of the property of its subjects, particularly, that located within its own territories is the paramount duty of any Government. If such power is not covered by a General Entry as peace, order and good government in the Canadian Constitution, it will have to be seen whether there is any other Entry or Entries which carries out that object.

5. There are various Entries in Lists II and III of the Seventh Schedule which relate to the management of Estates belonging to persons who are not able to manage their own. See List II, Entry No. 21. land... court of wards, Encumbered and attached Estates, List III, Entry No. 6. Infants and minors, Entry No. 8 Trust and Trustees, and Entry No 12 Administrator General and Official Trustees. It has been held that the meanings to be attached to these Entries should be determined by the Legislative practice relating to their subject-matter (Croft V. Dunphy (1933)A.C. 156; Sir Byramji Jeejeebhoy V. Province of Bombay I.L.R. (1940) Bom.58)

6. The legislative practice in regard to Administrators General can be found by various enactment such as the Administrator General Act, 1913, Bombay Regulation VIII of 1827. Sections 10 and 11 of the Administrator General Act indicate that where there is danger to be

apprehended of misappropriation, deterioration or waste of assets of a person who had died on account of dispute as to succession or where there is no person immediately available who is legally entitled to the succession of such assets, the Administrator General is entitled to take possession of the assets and manage them. Similar words occur in the preamble to Bombay Regulation VIII of 1827. It is true that both the Enactments refer to the assets of a persons who has died. But really speaking the Enactments are made in the interest of the living i.e. to protect or preserve the assets for the beneft of his successrs or heirs. The property or assets of a person who has left the Indian Dominion would be in the same predicament. If Government is satisfied that there is a danger of their imsappropriation, deterioration or waste, it would be competent to assume powers similar to those in the Enactments referred to above for their protection or preservation. Along with this power, the Entry "Public Order" List III in the Seventh Schedule can be relied on.

7. One point which requires consideration in regard to the definition of "Evacuee". The Punjab Act, as originally passed defines the expression as a person ordinarily resident in or owning property or carrying on business within the territories who on account of civil disturbances, or the fear of such disturbances leaves or has left the said territories. A clause has been added which provides that a person who on account of civil disturbance or the fear of such disturbances or the partition of the Country cannot transfer, occupy or supervise his property or carry on his business or watch his interest

or enforce his rights. It appears that this clause has given a widely extended meaning to the expression "evacuee" A person may live in the same or near the place which he was occupying. For instance, he may be carrying on a business in a place at Byculla; but on civil disturbances there, may have migrated to Girgaum. To call such a person an evacuee would be putting a meaning on the expression which is not warranted. It is therefore suggested that powers under the Ordinance should be taken in respect of persons who have left the territores of the Indian Dominion or persons who have left the Province of Bombay, and on account of such absence from the Province, cannot occupy or supervise their property or carry on their business or watch their interest or enforce their rights. In other respects, the draft Ordinance follows the Punjab Act, as amended by the Act of 1948, and appears to be in roder.

J. R. Dhurandhar.
1. 6. 48.
Addl. Secretary,
Legal Department.

Madhav Raokadam.
5/6.

Legal Department.

The case is an immediate and Government are anxious to promulgate this Ordinance as early as possible.

I understand that the Advocate General is about to leave for Delhi in a few days.

I shall be obliged if the Advocate General will be pleased to give me time for discussion of this case with him in a day or two. As the matter is immediate, it will be desirable to consider this matter at a personal discussion.

J. R. Phurandhar.

Additional Secretary to Government,
Legal Department.

U. R. to Advocate General No. 275-confl.
dated the 1st June 1948.

The advocate General with whom this case was discussed agrees with the view taken above on the both points. He agrees that the Government may proceed with the promulgation of the Ordinance. He also agrees that the word 'Evacuee' should not be given as extended a meaning as has been given in the Punjab Act, but should have a restricted meaning as prepared in the note.

sd/- J.R.D.
4/6.

Madhav Raokadam
6/5 6/6.

Legal Department.

A draft Bill to provide for the administration of evacuees' property in the Province of Bombay is sent herewith. A revised Statement of Objects and Reasons is also appended.

2. The Bill requires the previous sanction of the Governor under section 299(3) of the Government of India Act, 1935, and his recommendation under section 82(3) of the said Act.

As already pointed out in this Department U. R. No. 287-Coll. dated 8th June 1948, the provisions of clauses 6 and 8 are repugnant to the provisions of the Transfer of Property Act 1882 which is an existing law relating to entry 8 in List III.

The provisions of the Bill are also generally repugnant to the provisions of the Administrator General's Act, 1913, the Official Trustees Act, 1913, and the Indian Trusts Act, 1882, which are existing laws relating to entries 12 and 9 in List III in the Seventh Schedule to the Government of India Act, 1935. The Bill will have therefore, to be reserved for the consideration of the Governor General with reference to section 107 (2) of the said Act.

sd/- M. D.
Additional Secretary to Govt.

U. R. to R.& R. D. No. 26-L dated the 13th September, 1948.

Madhav Rookadam.
c/5 6/6.

No. 4328.

Legal Department,

Bombay Castle, 20th April 1949.

From

J. R. Dhurandhar, Esquire, O.B.E.,
Additional Secretary to the Government of
Bombay, Legal Department.

To

The Private Secretary to the Governor of Bombay.

Subject:- The Bombay Evacuees (Administration of Property) Bill, 1949.

Sir,

With reference to section 75 of the Government of India Act, 1935, I am directed to forward herewith for being presented to His Excellency the Governor the authentic copy of the Bombay Evacuees (Administration of Property) Bill, 1949, which was read for the third time and passed at the meetings of the Bombay Legislative Assembly and the Bombay Legislative Council held on the 1st April 1949 and on the 5th April 1949, respectively.

2. The subject-matter of the Bill falls under entries 1,2,21,37 and 54 in List II and entries 1,2,4,5,8,9, 12,15 and 36 in List III in the Seventh Schedule to the Government of India Act, 1935. The provisions of clauses 6 and 8 are repugnant to the provisions of the Transfer of Property Act, 1882 which in an existing law relating to entry 8 in List III. The provisions of the Bill are also generally repugnant to the provisions of the Administrator General's Act, 1913, the Official Trustees Act, 1913, and the Indian Trusts Act, 1882, which are existing laws relating to entries 12 and 9 in List III in the Seventh Schedule to the Govern-

to the Government of India Act, 1935. It is therefore necessary to reserve the Bill for the consideration of the Governor General with reference to section 107(2) of the Government of India Act, 1935.

3. I also forward herewith six copies of each of

1.	Bill as introduced in the Bombay Legislative Assembly with the Statement of Objects and Reasons.	XXX the items Nos. 1 to 3 and two copies of
2.	Bill as read for the third time and passed by the Bombay Legislative Assembly and as introduced in the Bombay Legislative Council.	
3.	Bill as read for the third time and passed by the Bombay Legislative Council.	
4.	Extracts from the proceedings of the Bombay Legislative Assembly dated the 1st April 1949 and of the Bombay Legislative Council dated the 5th April 1949.	

item No. 4 of the papers noted in the margin. The Bill was not referred to a Select Committee.

4. As Government desires that in view of certain circumstances the Bill should become law at the earliest possible date, it is requested that His Excellency the Governor General may be moved to give his assent to the Bill as soon as possible and to convey the assent by telegram and also to communicate the date on which the assent is given.

Yours faithfully,

sd/-
20/4.

Additional Secretary to the Government of Bombay, Legal Department.

Memorandum.

The Secretary to the Government of Bombay, Relief and Rehabilitation Department.

Madhav Raokadam.
V5 6/6.

No. P.S.G.-1419.

FROM

L. U. Nadkarni, Esquire, I.C.S.

PRIVATE SECRETARY TO THE GOVERNOR OF BOMBAY

TO

The Secretary to the Bombay Legislature Department,
Council Hall, Bombay.

GOVERNMENT HOUSE,

BOMBAY. April 23rd, 1948.

Subject: The Bombay Evacuees (Administration of Property) Bill, 1948.

Sir,

With reference to the Bombay Evacuees (Administration of Property) Bill, 1948, which was passed by the Bombay Legislative Assembly and the Bombay Legislative Council on April 1, 1948 and April 5, 1948, respectively, I am directed to state, for the information of the Honourable the Speaker and the Honourable the President, that as the provisions of clauses 5 and 8 of the Bill are repugnant to the provisions of the Transfer of property Act, 1882, which is an existing law relating to entry 6 in List III, and as the provisions of the Bill are also generally repugnant to the provisions of the Administrator General's Act, 1913, the Official Trustees Act, 1913, and the Indian Trusts Act, 1882, which are existing laws relating to entries 12 and 9 in List III in the Seventh Schedule to the Government of India, Act, 1935, it is necessary to reserve the Bill for the consideration of the Governor General with reference to section 107(2) of the Government of India Act, 1935. His Excellency the Governor is accordingly pleased, under section 75 of the Government of India Act, 1935,

to declare that he reserves the Bill for the consideration

f His Excellency the Governor General.'

Yours faithfully,

L. M. Nadkarni.

Private Secretary to the Governor of Bombay,

Madhav Raokadam.
c/5. 6/6.

No. P. S. G. - 1410.

Office of the Governor's Private
Secretary, Government House.

Bombay, April 23rf 1949.

copy forwarded with compliments for information to

The Additional Secretary to Government, Legal
Department with reference to this letter
No. 4328, dated the April 20, 1949.

The Deputy Secretary to Government Relief and Rehabilitation
Department, with reference to his endorsement No.
R. 141-B, dated April 21, 1949.

By order of the Governor of Bombay

sd/-
Private Secretary to
the Governor of Bombay.

Madhav Raokada...
c/5. 6/6.

No. P.S.G. 1649.

From

The Private Secretary to the Governor
of Bombay,

To

The Additional Secretary to Government,
Legal Department.

Government House,
Bombay, May 18th 1949.

Subject: The Bombay Evacuees (Administration of Property) Bill, 1949.

Sir;

In continuation of my letter No, P.S.G 1629, dated May 16, 1949, on the above subject, I am directed to forward herewith the authentic copy of the Bombay Evacuees (Administration of Property) Bill, 1949, with His Excellency the Governor General's assent signified thereon.

Yours faithfully,

sd/-
For Private Secretary to
the Governor of Bombay,

Madhav Raokadam.
c/5. 6/6.

Publication of the Bombay Evacuees (Administration Property) Act, 1949.

GOVERNMENT OF BOMBAY.
legal Department.
Resolution No. 5505
Bombay Castle, 17th May 1949.

Letter to the Private Secretary tothe Governor No. 4328, dated the 20th April 1949.

Letter from the Private Secretary to the Governor, No. P.S.G. 1625 dated 16th May 1949.

RESOLUTION:- The law should be published as Bombay Act No. XXIV of 1949, in the Bombay Government Gazette dated the 17th May 1949.

2. The Act should be translated into Marathi, Gujarati, Kannada and Hindustani (in Urdu and Devnagari scripts) and the translations should be published in the Bombay Government Gazette.

3. A copy of the Act should be forwarded to the Rehabilitation Department.

By order of the Governor
of Bombay,

S.L.Chaudhari,

Assistant Secretary to the Government.

To

The Manager, Government Central Press, Bombay (with a copy of the Act and with a request that 30 Gazette copies of the Act may be forwaded to the Legal Departme

The Rehabilitation Department,
The Oriental Translator to Government,
The Bombay Legislature Department,
The Director of Publicity, Bombay,
} WITH a copy of the Act.

the Enquiry Office) for the Secretariat,
Bombay,

With five extra copies of the Act.'

Madhav Raokadam,
c/5 6/6

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Registered No. B-1

The
Bombay Government Gazette
PUBLISHED BY AUTHORITY

THURSDAY, 23RD SEPTEMBER 1948.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V

[To be translated into Marathi, Gujarati, Kannada and Hindustani (in Urdu and Devnagari scripts) and the translations to be published in the "Bombay Government Gazette". The dates of publication to be reported.]

The following Bill is published under the proviso to rule 80 of the Bombay Legislative Assembly Rules :—

A. BILL No. LXXVIII OF 1948.

A Bill to provide for the administration of evacuees' property in the Province of Bombay.

WHEREAS it is expedient to provide for the administration of evacuees' property in the Province of Bombay with a view to preserving and protecting such property from misappropriation, deterioration or waste and for certain other purposes hereinafter specified; It is hereby enacted as follows :—

1. (*1*) This Act may be called the Bombay Evacuees (Administration of Property) Act, 1948. Short title and extent.

(*2*) It shall extend to the whole of the Province of Bombay.

2. In this Act, unless there is anything repugnant in the subject or context,— Definitions.

(*a*) "Custodian" means the Custodian of Evacuee Property and includes a Deputy Custodian of Evacuee Property and an Assistant Custodian of Evacuee Property, appointed under this Act;

(*b*) "evacuee" means—

(*1*) a person ordinarily resident in, or owning property or carrying on business within, the territories comprised

: in the Province of Bombay, who on account of civil disturbances or the fear of such disturbances, or the partition of the country,—

(*i*) leaves or has since the 15th day of August 1947 left the said territories for a place outside India; or

(*ii*) leaves or has since the 15th day of August 1947 left the said territories for any place outside the Province, but within the Dominion of India, and cannot personally occupy or supervise his property or carry on his business or watch his interests or enforce his rights within the Province; or

(*2*) a person not resident in, but owning property or carrying on business within, the territories comprised in the Province of Bombay, who on account of civil disturbances or the fear of such disturbances, or the partition of the country, cannot personally occupy or supervise his property or carry on his business or watch his interests or enforce his rights within the Province.

Explanation.—If any question arises whether a person is an evacuee or not, the question shall be referred to the Provincial Government whose decision shall be final;

(*c*) "evacuee property" means all property which belongs to, or was occupied by, an evacuee, but does not include any moveable property in his immediate physical possession;

(*d*) "personal supervision (with its grammatical variations) of property or carrying on business or watching one's interest or enforcing one's right" means supervision or carrying on business, watching or enforcing, as the case may be, under one's personal presence or by agents or servants under one's personal presence in the Province.

Explanation.—If a person is a widow or a minor or is subject to any physical or mental disability, such person shall be deemed to supervise the property or to carry on business or to watch his interest or to enforce his rights personally, if such supervision is made by the agent or guardian of the person duly recognised in this behalf by the Provincial Government or such officer as the Provincial Government may authorise in this behalf;

(*e*) "prescribed" means prescribed by rules made under this Act; and

(*f*) "property" means any moveable or immovable property and includes any right or interest in any shop or business establishment or any factory or workshop or undertaking or in any debt or actionable claim other than a mere right to sue but does not include cash deposits in banks.

Appointment of Custodian, etc.

3. For the purposes of this Act, the Provincial Government may appoint a Custodian of Evacuee Property for the Province of Bombay, and, either by name or designation,

one or more Deputy Custodians of Evacuee Property and Assistant Custodians of Evacuee Property for such local area as may be specified, and may, by general or special order, provide for the distribution or allocation of the work to be performed by them under this Act or the rules made thereunder.

Vesting of evacuee property in Custodian.

4. All evacuee property situated within the Province shall vest in the Custodian for the purposes of this Act and shall continue to be so vested until the Provincial Government by notification otherwise directs.

Payment to Custodian of sums payable to evacuees.

5. (*1*) Any sum payable to an evacuee in respect of any contract or loan or otherwise howsoever shall be paid to the Custodian by the person liable to pay such sum and shall be held by the Custodian subject to the provisions of this Act.

(*2*) Any payment made otherwise than in accordance with sub-section (*1*) shall not be deemed to discharge the obligation, and shall not affect the right of the Custodian to enforce such obligation.

Custodian to take possession of evacuee property.

6. (*1*) Subject to the provisions of this Act, a Custodian may by general or special order with reference to the location or description of a specific or any class of evacuee property assume possession of, or control over, the property mentioned in the order which shall be published in the *Official Gazette*. From the date of the order, the holder of such property, if any, shall be deemed to be holding it on behalf of the Custodian and shall on demand deliver possession of it to the Custodian or a person authorised by him in this behalf.

(*2*) If the holder of such property refuses or fails to deliver possession of the property, the Custodian may evict such person and use all force necessary thereto, and may after giving reasonable warning and facility to any woman not appearing in public to withdraw, remove or open any lock or bolt or break open any door or do any act necessary for taking possession of the property.

(*3*) The Custodian shall proceed to take possession of the property in the presence of not less than two residents of the locality, at least one of whom if possible shall be a member of the community to which the evacuee owner belongs, and shall prepare a record, in duplicate, of the proceedings which shall be signed by him and each of the witnesses.

(*4*) When the Custodian takes possession of moveable property (including the stock-in-trade or plant or machinery of any undertaking), he shall prepare an inventory, in duplicate, of all such moveable property in the presence of not less than two residents of the locality at least one of whom if possible shall be a person belonging to the community to which the evacuee owner belongs, and also a record of his proceedings, in duplicate, and each copy shall be signed by him and each of the witnesses

(5) On the conclusion of the proceedings under sub-section (3) or sub-section (4), the Custodian shall forward one copy of the record and inventory where the property is situated in Greater Bombay to the Bombay City Civil Court and where the property is situated elsewhere to the District Court concerned for record.

Inquiry into claims to evacuee property.

7. (1) Any person claiming any right to or interest in any property, of which the Custodian has taken possession under section 6, may prefer such claim to the Custodian by an application within thirty days from the date on which the possession of the property was taken.

(2) The Custodian may, after summary inquiry, reject the application, if it appears to him that the claim is untenable.

(3) If upon such inquiry it appears to the Custodian that the applicant has a right to, or interest in, the property, he may make such order as he considers proper in order to give effect to such right or interest consistently with the objects of this Act:

Provided that if the Custodian is satisfied that the property is not evacuee property and that the applicant is entitled to the exclusive possession of the property, he may deliver possession of the property to the applicant.

(4) The Custodian shall record an order made under sub-section (2) or (3) setting out his findings and the reasons therefor.

(5) Any person aggrieved by an order made under sub-section (2) or (3) may, in Greater Bombay, appeal to the Bombay City Civil Court and elsewhere to the District Court concerned within one month of the making of the order.

(6) The High Court may of its own motion or on an application made to it call for the record of any proceedings relating to an evacuee property whether pending or disposed of under sub-section (2) or (3) for the purpose of satisfying itself as to the legality or propriety of an order passed in the aforesaid proceedings, and may pass such order in relation thereto as it may think fit.

(7) Subject to the decision of the Court in appeal or the High Court in revision the order of the Custodian shall be final and conclusive.

Prohibition of certain transactions affecting evacuee property.

8. (1) No sale, mortgage, pledge, lease, exchange or other transfer of any property or of any interest or right in or over any property made by an evacuee or by any person in anticipation of his becoming an evacuee, or by the agent, assign or attorney of the evacuee or such person, on or after the date on which this Act comes into force, shall be effective so as to confer any rights or remedies on the parties to such transfer or on any person claiming under them unless it is confirmed by the Custodian

(2) An application for confirming such transfer may be made by any person claiming thereunder or by any person lawfully authorised by him.

(3) The Custodian shall reject any application made after the expiration of two months from the date of the transaction.

(4) The Custodian shall hold a summary inquiry into an application, which is not rejected under sub-section (3), and may decline to confirm the transaction if it appears to the Custodian that—

(a) the transaction was not a *bona fide* one for valuable consideration; or

(b) the transaction is in the opinion of the Custodian prejudicial to the prescribed objects; or

(c) for any other reason, to be recorded by the Custodian in writing, the transaction ought not to be confirmed.

(5) If the Custodian confirms the transaction he may confirm it unconditionally or subject to such conditions and terms as he may consider proper.

(6) The Custodian, if the order is pronounced in the absence of the applicant, shall forthwith give notice in writing to the applicant of any order passed by him under sub-section (3), (4) or (5).

Appeals.

9. (1) If the original order under section 8 is passed by an Assistant or Deputy Custodian of Evacuee Property, any person aggrieved by such order may appeal, within sixty days from the date of the communication of such order, to the Custodian of Evacuee Property and subject only to the decision on such appeal, if any, the order passed by the Assistant or Deputy Custodian of Evacuee Property, or any original or appellate order passed by the Custodian shall be final and conclusive.

(2) An appeal under this section may be admitted after the period of limitation prescribed therefor, if the appellant satisfies the Custodian to whom he appeals that he had sufficient cause for not presenting the appeal within such period.

Exemption from attachment.

10. All property of which the Custodian has taken possession under section 6 shall be exempt from attachment, distress or sale in execution of a decree of a court or an order of any other authority.

Powers of Custodian in regard to management.

11. (1) The Custodian may take or authorise the taking of such measures as he considers necessary or expedient for preserving the property of or over which he has taken possession or control and for the proper management thereof.

(2) Without prejudice to the generality of the foregoing provision, the Custodian may, for the said purposes,—

(i) carry on the business of the evacuee;

(ii) take action for the recovery of any money due the evacuee;

(*iii*) make any contracts or execute any documents in the name and on behalf of the evacuee;

(*iv*) institute, defend or continue any legal proceedings in a civil or revenue court on behalf of the evacuee, refer any dispute to arbitration and compromise any claims, debts or liabilities;

(*v*) raise on the security of the property such loans as may be necessary;

(*vi*) incur any expenditure, including the payment of any taxes, duties, cesses and rates to Government or to any local authority, and of any wages and salaries, pensions or provident fund contributions to or in respect of any employee of the evacuee and the payment of any debt due by the evacuee to any person;

(*vii*) transfer by way of sale or mortgage or lease or otherwise dispose of any of the property of the evacuee:

Provided that the Custodian shall not sell any immovable property or any shop or business establishment or any undertaking except on the orders of the Provincial Government;

(*viii*) invest any money held by him in any of the securities approved by the Provincial Government;

(*ix*) make payments for the maintenance of the evacuee or his family;

(*x*) where any building vesting in him is through imminent danger of collapse or for any other reason a source of danger to persons residing or carrying on business in the vicinity, to have it demolished, and in such case to sell the materials;

(*xi*) appoint a manager for the property of the evacuee and authorise him to exercise any of the powers of the Custodian under this section, and subject to the orders of the Provincial Government, fix the remuneration payable to such manager; and

(*xii*) delegate by general or special order to such officers as he considers necessary any of his functions under this Act.

Maintenance of accounts.

12. (*1*) The Custodian shall maintain a separate account of the property of each evacuee of which he has taken possession under section 6 and shall cause to be made therein entries of all receipts and payments.

(*2*) The accounts shall be maintained in such form and manner as the Provincial Government may prescribe.

(*3*) The manager of any property shall maintain the accounts and records relating to the property in his charge, and shall submit such accounts to the Custodian at least once a month.

(*4*) The Provincial Government shall cause such accounts to be inspected and audited at such intervals and by such persons as it shall determine.

Fees.

13. (*1*) The Provincial Government may prescribe the fees payable to the Custodian for the management of the property of which he takes possession under section 6.

(*2*) Such fees shall be payable out of the income of the property and shall be a first charge on the property.

(*3*) The fees paid under sub-section (*1*) shall be credited to the Provincial Government.

Return of property.

14. (*1*) On being satisfied that evacuees have returned or are returning to the Province, the Provincial Government may, by notification in the *Official Gazette*, authorise return of their immovable property to the owners in accordance with this section and subject to such conditions and terms as may be specified in the notification.

(*2*) Any person claiming to be entitled to any such property may apply in writing to the Custodian, who shall, after giving public notice, hold a summary inquiry into the claim, and make a formal order declaring the person to whom the possession of the property may be delivered.

(*3*) The delivery of the property to the person named in such order shall absolve the Custodian of all responsibility and liability in respect of the property, but shall not prejudice any rights in respect of the property, which any other person may be entitled to by due process of law to enforce against the person to whom possession of the property is so delivered :

Provided that every lease validly granted by the Custodian shall have effect as against the owner until determined by lapse of time or operation of law.

(*4*) The Custodian shall deliver or cause to be delivered to the person named in the order referred to in sub-section (*2*) a statement containing an abstract of the account of the management of the property and, if any sum be due and outstanding to the Custodian in respect of the excess expenses or fees, a notice requiring that person to pay such sum with interest at the rate of six per centum per annum from the date of the notice ; and if the sum be not paid within time specified in the notice it will be recoverable as provided in section 25.

(*5*) The Custodian may direct return of the moveable property in his possession to the owner at any time on such conditions and terms as he deems fit.

Powers of Custodian holding inquiry.

V of 1908.

15. The Custodian while holding an inquiry under this Act shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, when trying a suit, in respect of the following matters, namely :—

(*a*) enforcing the attendance of any person and examining him on oath ;

(*b*) compelling the production of documents and material objects ;

(*c*) administering oaths ;

(*d*) in respect of such other matters as may be prescribed, and shall be deemed to be a court within the meaning of sections 480 and 482 of the Code of Criminal Procedure, 1898. V of 1898.

Power of Custodian to obtain information.

16. (*1*) The Custodian may by an order in writing require any person to furnish any information or produce any books, accounts or other documents possessed by such person relating to any property referred to in section 4 or otherwise necessary for carrying into effect the objects of this Act.

(*2*) Whoever fails to comply with a direction under sub-section (*1*) or submits information which is false or which he either knows or has reasonable cause to believe to be false or does not believe to be true, shall, on conviction, be punished with imprisonment for a term which may extend to six months and shall also be liable to fine.

Other powers of Custodian.

17. (*1*) The Custodian may, if it appears to him to be necessary to do so to secure compliance with this Act or otherwise carry into effect the objects of this Act,—

(*a*) inspect or cause to be inspected any books, accounts or other documents ; and

(*b*) enter and search or authorise any person to enter and search any premises.

(*2*) Whoever obstructs the Custodian or any person acting under his direction in the exercise of the powers conferred under sub-section (*1*) shall, on conviction, be punished with imprisonment for a term which may extend to six months or with fine or with both.

Penalty for failing to surrender possession of, or to vacate, property.

18. (*1*) Any person who fails to comply with an order to surrender possession of or to vacate any property made by the Custodian or any person authorised by him in this behalf shall, on conviction, be punished with imprisonment for a term which may extend to six months or with fine or with both.

(*2*) An offence under sub-section (*1*) shall be cognisable.

Certain officers to be public servants.

19. The Custodian and every person duly appointed by any authority to discharge any functions under this Act or the rules made thereunder shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code. XLV of 1860.

Orders not to be called in question.

20. Except as provided in this Act, no order made in exercise of any power conferred by this Act shall be called in question in any Court.

Procedure.

21. No prosecution for any offence punishable under this Act shall be instituted except with the previous sanction of the Provincial Government or any officer authorised by it in this behalf by general or special order.

Saving.

22. Anything done or purported to have been done under this Act shall not be invalidated or affected by reason only that at a material time,—

(*a*) some person who was or might have been interested in or over property and who was an evacuee had died or had ceased to be an evacuee, or

(*b*) some person who was so interested and who was believed by the Custodian to be an evacuee was not an evacuee.

Effect of Acts, etc., inconsistent with other enactments.

23. The provisions of this Act and the rules made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or any instrument having effect by virtue of any such enactment.

Bar to legal proceedings.

24. No suit or prosecution or other legal proceedings shall lie against the Provincial Government or the Custodian or any person acting under the direction of the Provincial Government or the Custodian in respect of anything which is in good faith done or intended to be done in pursuance of this Act.

Recovery of arrears.

25. Any arrear due from or sum payable by any person to the Custodian may on application to the Collector be realized as an arrear of land revenue.

Records under Act to be public documents.

26. All records prepared or registers maintained under this Act shall be deemed to be public documents within the meaning of the Indian Evidence Act, 1872, and shall be presumed to be true until the contrary is proved.

I of 1872.

Notice to Custodian.

27. (*1*) In any suit in which it appears to the Civil or Revenue Court that a question relating to the property of an evacuee is involved, the Court shall not proceed to determine that question until after notice has been given to the Custodian.

(*2*) The Court may at any stage of the proceedings order that the Custodian shall be added as a defendant in any civil or revenue suit involving a question relating to the property of an evacuee, if the Custodian, whether upon receipt of notice under sub-section (*1*) or otherwise, applies for such addition and the Court is satisfied that such addition is necessary or desirable for the satisfactory determination of the question involved.

(*3*) In the application of this section to appeals the word "defendant" shall be construed to include a respondent and the word "suit" an appeal.

Power to make rules.

28. (*1*) The Provincial Government may, by notification in the Official Gazette, make such rules as appear to it to be necessary or expedient to carry into effect the provisions of this Act.

(2) Without prejudice to the generality of the powers conferred by sub-section (*1*), the rules may provide for, or may empower any authority to make orders providing for all or any of the following matters, namely :—

(*a*) the forms of the applications and the manner of their presentation ;

(*b*) the forms of the notices to be issued, the orders to be made and the manner of their service and publication ;

(*c*) the manner in which appeals may be presented ;

(*d*) the procedure for holding summary inquiries and for the disposal of appeals ;

(*e*) the procedure governing the grant of leases or the sale of property by the Custodian and the periods for which leases may be granted ;

(*f*) the forms of and the manner in which accounts and records shall be maintained ;

(*g*) the classes of officers to be appointed by the Custodian, their remuneration, designations, powers and functions and the extent of their jurisdiction ;

(*h*) the intervals at which, the manner in which and the authority by whom, the accounts and records maintained under this Act shall be inspected and audited ;

(*i*) fees payable to the Custodian for management of the property ;

(*j*) any other matter which is to be or may be prescribed.

(3) All rules made under this section shall be subject to the condition of previous publication.

STATEMENT OF OBJECTS AND REASONS.

Some persons residing in the Province of Bombay have left the Province on account of civil disturbances or the fear of such disturbances or the partition of the country leaving their properties and business without management. Similarly, some persons not resident in the Province but owning property or carrying on business in the Province cannot personally occupy or supervise their properties or carry on their business in the Province on account of such disturbances or the partition of the country. In order to provide for the management, preservation and supervision of such properties and business, it is considered necessary to undertake legislation. It is accordingly proposed to enact a law providing for the appointment of a custodian in whom shall vest all evacuee property situated in the Province. Necessary provisions for the maintenance of accounts of the property of the evacuees and its return to them on their coming back to the Province are made in the proposed law.

The important provisions in the Bill are explained in the following paragraphs :—

Clause 2.—This is a definition clause. Among other words and expressions, "evacuee" and "evacuee property" are defined.

Clause 3.—This clause provides for the appointment of the custodian and his deputies and assistants.

Clause 4.—This clause provides that all evacuee property shall vest in the custodian.

Clause 5.—This clause makes it compulsory that all payments due to an evacuee shall be made to the custodian.

Clause 6.—This clause enables the custodian to take possession of evacuee property.

Clause 7.—This clause provides for an inquiry into claims against the evacuee property.

Clause 8.—As all evacuee property vests in the custodian, this clause prohibits any transfer of evacuee property by any evacuee or any other person. If any such transfers have been made, this clause requires their confirmation by the custodian.

Clause 9.—This clause provides for appeals against the orders passed by the deputies and assistants of the custodian.

Clause 10.—This clause exempts evacuee property from being subject to attachment, distress or sale in execution of a decree of a court.

Clause 11.—This clause relates to the powers of the custodian to manage the evacuee property.

Clause 12.—This clause relates to the keeping of accounts of the evacuee property.

Clause 14.—This clause provides for the return of the evacuee property.

Clause 28.—This clause enables Government to make rules for the purpose of carrying out the provisions of the Act.

Dated 21st September 1948. (Signed) B. G. KHER.

By order of the Governor of Bombay,

J. R. DHURANDHAR,
Additional Secretary to the Government of Bombay,
Legal Department.

Poona, dated the 22nd September 1948.

BOMBAY : PRINTED AT THE GOVERNMENT CENTRAL PRESS.

Registered No. B-1

The

Bombay Government Gazette

PUBLISHED BY AUTHORITY

TUESDAY, 17TH MAY 1949.

ate paging is given to this Part in order that it may be filed as a separate compilation.

PART IV

(1) Acts of the Local Legislature of the Bombay Province and (2) Acts of the Indian Legislature assented to by the Governor General.

CONTENTS.

BOMBAY ACT No. XXIV OF 1949—An Act to provide for the administration of evacuees' property in the Province of Bombay ... ... PAGES 162-171

The following Act of the Bombay Legislature having been assented to by the Governor General on the 12th May 1949 is hereby published for general information.

J. R. DHURANDHAR,
Additional Secretary to the Government of Bombay,
Legal Department.

BOMBAY ACT No. XXIV OF 1949.

(First published, after having received the assent of the Governor General, in the "Bombay Government Gazette" on the 17th May 1949).

An Act to provide for the administration of evacuees' property in the Province of Bombay.

WHEREAS it is expedient to provide for the administration of evacuees' property in the Province of Bombay with a view to preserving and protecting such property from misappropriation, deterioration or waste and for certain other purposes hereinafter specified; It is hereby enacted as follows:—

Short title and extent.

1. (*1*) This Act may be called the Bombay Evacuees (Administration of Property) Act, 1949.

(*2*) It shall extend to the whole of the Province of Bombay.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(*a*) "Custodian" means the Custodian of Evacuee Property and includes a Deputy Custodian of Evacuee Property and an Assistant Custodian of Evacuee Property, appointed under this Act;

(*b*) "evacuee" means—

(*1*) a person ordinarily resident in, or owning property or carrying on business within, the territories comprised in the Province of Bombay, who on account of civil disturbances or the fear of such disturbances, or the partition of the country,—

(*i*) leaves or has since the 15th day of August 1947 left the said territories for a place outside India; or

(*ii*) leaves or has since the 15th day of August 1947 left the said territories for any place outside the Province, but within the Dominion of India, and cannot personally occupy or supervise his property or carry on his business or watch his interests or enforce his rights within the Province; or

(*2*) a person not resident in, but owning property or carrying on business within, the territories comprised in the Province of Bombay, who on account of civil disturbances or the fear of such disturbances, or the partition of the country, cannot personally occupy or supervise his property or carry on his business or watch his interests or enforce his rights within the Province.

Explanation.—If any question arises whether a person is an evacuee or not, the question shall be referred to the Provincial Government whose decision shall be final;

(*c*) "evacuee property" means all property which belongs to, or was occupied by, an evacuee, but does not include any moveable property in his immediate physical possession;

(*d*) "personal supervision (with its grammatical variations) of property or carrying on business or watching one's interest or enforcing one's right" means supervision or carrying on business, watching or enforcing, as the case may be, under one's personal presence or by agents or servants under one's personal presence in the Province.

Explanation.—If a person is a widow or a minor or is subject to any physical or mental disability, such person shall be deemed to supervise the property or to carry on business or to watch his interest or to enforce his rights personally, if such supervision is made by the agent or guardian of the person duly recognised in this behalf by the Provincial Government or such officer as the Provincial Government may authorise in this behalf;

(*e*) "prescribed" means prescribed by rules made under this Act; and

(*f*) "property" means any moveable or immovable property and includes any right or interest in any shop or business establishment or any factory or workshop or undertaking or in any debt or actionable claim other than a mere right to sue but does not include cash deposits in banks.

Appointment of Custodian, etc.

3. For the purposes of this Act, the Provincial Government may appoint a Custodian of Evacuee Property for the Province of Bombay, and, either by name or designation,

one or more Deputy Custodians of Evacuee Property and Assistant Custodians of Evacuee Property for such local area as may be specified, and may, by general or special order, provide for the distribution or allocation of the work to be performed by them under this Act or the rules made thereunder.

Vesting of evacuee property in Custodian.

4. All evacuee property situated within the Province shall vest in the Custodian for the purposes of this Act and shall continue to be so vested until the Provincial Government by notification otherwise directs.

Payment to Custodian of sums payable to evacuees.

5. (*1*) Any sum payable to an evacuee in respect of any contract or loan or otherwise howsoever shall be paid to the Custodian by the person liable to pay such sum and shall be held by the Custodian subject to the provisions of this Act.

(*2*) Any payment made otherwise than in accordance with sub-section (*1*) shall not be deemed to discharge the obligation, and shall not affect the right of the Custodian to enforce such obligation.

Custodian to take possession of evacuee property.

6. (*1*) Subject to the provisions of this Act, a Custodian may by general or special order with reference to the location or description of a specific or any class of evacuee property assume possession of, or control over, the property mentioned in the order which shall be published in the *Official Gazette*. From the date of the order, the holder of such property, if any, shall be deemed to be holding it on behalf of the Custodian and shall on demand deliver possession of it to the Custodian or a person authorised by him in this behalf.

(*2*) If the holder of such property refuses or fails to deliver possession of the property, the Custodian may evict such person and use all force necessary thereto, and may, after giving reasonable warning and facility to any woman not appearing in public to withdraw, remove or open any lock or bolt or break open any door or do any act necessary for taking possession of the property.

(*3*) The Custodian shall proceed to take possession of the property in the presence of not less than two residents of the locality, at least one of whom if possible shall be a member of the community to which the evacuee owner belongs, and shall prepare a record, in duplicate, of the proceedings which shall be signed by him and each of the witnesses.

(*4*) When the Custodian takes possession of moveable property (including the stock-in-trade or plant or machinery of any undertaking), he shall prepare an inventory, in duplicate, of all such moveable property in the presence of not less than two residents of the locality at least one of whom if possible shall be a person belonging to the community to which the evacuee owner belongs, and also a record of his proceedings, in duplicate, and each copy shall be signed by him and each of the witnesses.

(5) On the conclusion of the proceedings under sub-section (3) or sub-section (4), the Custodian shall forward one copy of the record and inventory where the property is situated in Greater Bombay to the Bombay City Civil Court and where the property is situated elsewhere to the District Court concerned for record.

Inquiry into claims to evacuee property.

7. (1) Any person claiming any right to or interest in any property, of which the Custodian has taken possession under section 6, may prefer such claim to the Custodian by an application within thirty days from the date on which the possession of the property was taken.

(2) The Custodian may, after summary inquiry, reject the application, if it appears to him that the claim is untenable.

(3) If upon such inquiry it appears to the Custodian that the applicant has a right to, or interest in, the property, he may make such order as he considers proper in order to give effect to such right or interest consistently with the objects of this Act:

Provided that if the Custodian is satisfied that the property is not evacuee property and that the applicant is entitled to the exclusive possession of the property, he may deliver possession of the property to the applicant.

(4) The Custodian shall record an order made under sub-section (2) or (3) setting out his findings and the reasons therefor.

(5) Any person aggrieved by an order made under sub-section (2) or (3) may, in Greater Bombay, appeal to the Bombay City Civil Court and elsewhere to the District Court concerned within one month of the making of the order.

(6) The High Court may of its own motion or on an application made to it call for the record of any proceedings relating to an evacuee property whether pending or disposed of under sub-section (2) or (3) for the purpose of satisfying itself as to the legality or propriety of an order passed in the aforesaid proceedings, and may pass such order in relation thereto as it may think fit.

(7) Subject to the decision of the Court in appeal or the High Court in revision the order of the Custodian shall be final and conclusive.

Prohibition of certain transactions affecting evacuee property.

8. (1) No sale, mortgage, pledge, lease, exchange or other transfer of any property or of any interest or right in or over any property made by an evacuee or by any person in anticipation of his becoming an evacuee, or by the agent, assign or attorney of the evacuee or such person, on or after the date on which this Act comes into force, shall be effective so as to confer any rights or remedies on the parties to such transfer or on any person claiming under them unless it is confirmed by the Custodian.

(2) An application for confirming such transfer may be made by any person claiming thereunder or by any person lawfully authorised by him.

(3) The Custodian shall reject any application made after the expiration of two months from the date of the transaction.

(4) The Custodian shall hold a summary inquiry into an application, which is not rejected under sub-section (3), and may decline to confirm the transaction if it appears to the Custodian that—

(a) the transaction was not a *bona fide* one for valuable consideration; or

(b) the transaction was made with the object of the disposal of the property by the person who, on account of civil disturbances or the fear of such disturbances or partition of the country intends to leave, or has since the 15th day of August 1947 left, the territories comprised in the Province for a place outside India; or

(c) the transaction is in the opinion of the Custodian prejudicial to the prescribed objects; or

(d) for any other reason, to be recorded by the Custodian in writing, the transaction ought not to be confirmed.

(5) If the Custodian confirms the transaction he may confirm it unconditionally or subject to such conditions and terms as he may consider proper.

(6) The Custodian, if the order is pronounced in the absence of the applicant, shall forthwith give notice in writing to the applicant of any order passed by him under sub-section (3), (4) or (5).

Appeals.

9. (1) If the original order under section 8 is passed by an Assistant or Deputy Custodian of Evacuee Property, any person aggrieved by such order may appeal, within sixty days from the date of the communication of such order, to the Custodian of Evacuee Property and subject only to the decision on such appeal, if any, the order passed by the Assistant or Deputy Custodian of Evacuee Property, or any original or appellate order passed by the Custodian shall be final and conclusive.

(2) An appeal under this section may be admitted after the period of limitation prescribed therefor, if the appellant satisfies the Custodian to whom he appeals that he had sufficient cause for not presenting the appeal within such period.

Exemption from attachment.

10. All property of which the Custodian has taken possession under section 6 shall be exempt from attachment, distress or sale in execution of a decree of a court or an order of any other authority.

Powers of Custodian in regard to management.

11. (1) The Custodian may take or authorise the taking of such measures as he considers necessary or expedient for preserving the property of or over which he has taken possession or control and for the proper management thereof.

(2) Without prejudice to the generality of the foregoing provision, the Custodian may, for the said purposes,—

(i) carry on the business of the evacuee;

(ii) take action for the recovery of any money due to the evacuee;

(*iii*) make any contracts or execute any documents in the name and on behalf of the evacuee;

(*iv*) institute, defend or continue any legal proceedings in a civil or revenue court on behalf of the evacuee, refer any dispute to arbitration and compromise any claims, debts or liabilities;

(*v*) raise on the security of the property such loans as may be necessary;

(*vi*) incur any expenditure, including the payment of any taxes, duties, cesses and rates to Government or to any local authority, and of any wages and salaries, pensions or provident fund contributions to or in respect of any employee of the evacuee and the payment of any debt due by the evacuee to any person;

(*vii*) transfer by way of sale or mortgage or lease or otherwise dispose of any of the property of the evacuee:

Provided that the Custodian shall not sell any immovable property or any shop or business establishment or any undertaking except on the orders of the Provincial Government;

(*viii*) invest any money held by him in any of the securities approved by the Provincial Government;

(*ix*) make payments for the maintenance of the evacuee or his family;

(*x*) where any building vesting in him is through imminent danger of collapse or for any other reason a source of danger to persons residing or carrying on business in the vicinity, to have it demolished, and in such case to sell the materials;

(*xi*) appoint a manager for the property of the evacuee and authorise him to exercise any of the powers of the Custodian under this section, and subject to the orders of the Provincial Government, fix the remuneration payable to such manager; and

(*xii*) delegate by general or special order to such officers as he considers necessary any of his functions under this Act.

Maintenance of accounts.

12. (*1*) The Custodian shall maintain a separate account of the property of each evacuee of which he has taken possession under section 6 and shall cause to be made therein entries of all receipts and payments.

(*2*) The accounts shall be maintained in such form and manner as the Provincial Government may prescribe.

(*3*) The manager of any property shall maintain the accounts and records relating to the property in his charge, and shall submit such accounts to the Custodian at least once a month.

(*4*) The Provincial Government shall cause such accounts to be inspected and audited at such intervals and by such persons as it shall determine.

Fees.

13. (*1*) The Provincial Government may prescribe the fees payable to the Custodian for the management of the property of which he takes possession under section 6.

(*2*) Such fees shall be payable out of the income of the property and shall be a first charge on the property.

(*3*) The fees paid under sub-section (*1*) shall be credited to the Provincial Government.

Return of property.

14. (*1*) On being satisfied that evacuees have returned or are returning to the Province, the Provincial Government may, by notification in the *Official Gazette*, authorise return of their immovable property to the owners in accordance with this section and subject to such conditions and terms as may be specified in the notification.

(*2*) Any person claiming to be entitled to any such property may apply in writing to the Custodian, who shall, after giving public notice, hold a summary inquiry into the claim, and make a formal order declaring the person to whom the possession of the property may be delivered.

(*3*) The delivery of the property to the person named in such order shall absolve the Custodian of all responsibility and liability in respect of the property, but shall not prejudice any rights in respect of the property, which any other person may be entitled to by due process of law to enforce against the person to whom possession of the property is so delivered :

Provided that every lease validly granted by the Custodian shall have effect as against the owner until determined by lapse of time or operation of law.

(*4*) The Custodian shall deliver or cause to be delivered to the person named in the order referred to in sub-section (*2*) a statement containing an abstract of the account of the management of the property and, if any sum be due and outstanding to the Custodian in respect of the excess expenses or fees, a notice requiring that person to pay such sum with interest at the rate of six per centum per annum from the date of the notice ; and if the sum be not paid within the time specified in the notice it will be recoverable as provided in section 25.

(*5*) The Custodian may direct return of the moveable property in his possession to the owner at any time on such conditions and terms as he deems fit.

Powers of Custodian holding inquiry.

15. The Custodian while holding an inquiry under this Act shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, when trying a suit, in respect of the following matters, namely :—

V of 1908.

(*a*) enforcing the attendance of any person and examining him on oath ;

(*b*) compelling the production of documents and material objects ;

(*c*) administering oaths ;

(*d*) in respect of such other matters as may be prescribed, and shall be deemed to be a court within the meaning of sections 480 and 482 of the Code of Criminal Procedure, 1898. V of 1898.

Power of Custodian to obtain information.

16. (*1*) The Custodian may by an order in writing require any person to furnish any information or produce any books, accounts or other documents possessed by such person relating to any property referred to in section 4 or otherwise necessary for carrying into effect the objects of this Act.

(*2*) Whoever fails to comply with a direction under sub-section (*1*) or submits information which is false or which he either knows or has reasonable cause to believe to be false or does not believe to be true, shall, on conviction, be punished with imprisonment for a term which may extend to six months and shall also be liable to fine.

Other powers of Custodian.

17. (*1*) The Custodian may, if it appears to him to be necessary to do so to secure compliance with this Act or otherwise carry into effect the objects of this Act,—

(*a*) inspect or cause to be inspected any books, accounts or other documents ; and

(*b*) enter and search or authorise any person to enter and search any premises.

(*2*) Whoever obstructs the Custodian or any person acting under his direction in the exercise of the powers conferred under sub-section (*1*) shall, on conviction, be punished with imprisonment for a term which may extend to six months or with fine or with both.

Penalty for failing to surrender possession of, or to vacate, property.

18. (*1*) Any person who fails to comply with an order to surrender possession of or to vacate any property made by the Custodian or any person authorised by him in this behalf shall, on conviction, be punished with imprisonment for a term which may extend to six months or with fine or with both.

(*2*) An offence under sub-section (*1*) shall be cognizable.

Certain officers to be public servants.

19. The Custodian and every person duly appointed by any authority to discharge any functions under this Act or the rules made thereunder shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code. XLV of 1860.

Orders not to be called in question.

20. Except as provided in this Act, no order made in exercise of any power conferred by this Act shall be called in question in any Court.

Procedure.

21. No prosecution for any offence punishable under this Act shall be instituted except with the previous sanction of the Provincial Government or any officer authorised by it in this behalf by general or special order.

Saving.

22. Anything done or purported to have been done under this Act shall not be invalidated or affected by reason only that at a material time,—

(*a*) some person who was or might have been interested in or over property and who was an evacuee had died or had ceased to be an evacuee, or

(*b*) some person who was so interested and who was believed by the Custodian to be an evacuee was not an evacuee.

Effect of Acts, etc., inconsistent with other enactments.

23. The provisions of this Act and the rules made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or any instrument having effect by virtue of any such enactment.

Bar to legal proceedings.

24. No suit or prosecution or other legal proceedings shall lie against the Provincial Government or the Custodian or any person acting under the direction of the Provincial Government or the Custodian in respect of anything which is in good faith done or intended to be done in pursuance of this Act.

Recovery of arrears.

25. Any arrear due from or sum payable by any person to the Custodian may on application to the Collector be realized as an arrear of land revenue.

Records under Act to be public documents.

26. All records prepared or registers maintained under this Act shall be deemed to be public documents within the meaning of the Indian Evidence Act, 1872, and shall be presumed to be true until the contrary is proved.

1872.

Notice to Custodian.

27. (*1*) In any suit in which it appears to the Civil or Revenue Court that a question relating to the property of an evacuee is involved, the Court shall not proceed to determine that question until after notice has been given to the Custodian.

(*2*) The Court may at any stage of the proceedings order that the Custodian shall be added as a defendant in any civil or revenue suit involving a question relating to the property of an evacuee, if the Custodian, whether upon receipt of notice under sub-section (*1*) or otherwise, applies for such addition and the Court is satisfied that such addition is necessary or desirable for the satisfactory determination of the question involved.

(*3*) In the application of this section to appeals the word "defendant" shall be construed to include a respondent and the word "suit" an appeal.

Power to make rules.

28. (*1*) The Provincial Government may, by notification in the *Official Gazette*, make such rules as appear to it to be necessary or expedient to carry into effect the provisions of this Act.

(2) Without prejudice to the generality of the powers conferred by sub-section (1), the rules may provide for, or may empower any authority to make orders providing for all or any of the following matters, namely :—

(a) the forms of the applications and the manner of their presentation ;

(b) the forms of the notices to be issued, the orders to be made and the manner of their service and publication ;

(c) the manner in which appeals may be presented ;

(d) the procedure for holding summary inquiries and for the disposal of appeals ;

(e) the procedure governing the grant of leases or the sale of property by the Custodian and the periods for which leases may be granted ;

(f) the forms of and the manner in which accounts and records shall be maintained ;

(g) the classes of officers to be appointed by the Custodian, their remuneration, designations, powers and functions and the extent of their jurisdiction ;

(h) the intervals at which, the manner in which and the authority by whom, the accounts and records maintained under this Act shall be inspected and audited ;

(i) fees payable to the Custodian for management of the property ;

(j) any other matter which is to be or may be prescribed.

(3) All rules made under this section shall be subject to the condition of previous publication.

BOMBAY : PRINTED AT THE GOVERNMENT CENTRAL PRESS.